IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.MC.No. 1380 of 2003()

CC.402/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

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PETITIONER:

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1. MARTHANDA VARMA, S/O. R.R.VARMA,
   KOWDIAR PALACE, TRIVANDRUM.

2. RAMA VARMA, S/O. C.R.R. VARMA,
   -DO- -DO-.

BY ADV. SRI.MVS.NAMBOOTHIRY
SRI.P.RAHIM

RESPONDENTS:

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1. TRICHUR JEWELLERY,
   REPRESENTED BY ITS MANAGING DIRECTOR,
   SUSEELAN, T.C.37/889, VANCHIYOOR, TRIVANDRUM.

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.D.KISHORE
PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON 19/07/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.M.C.NO. 1380 of 2003

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DATED: 19-07-2007

O R D E R

In this petition filed under Section 482 Cr.P.C. the petitioners who are brothers and accused Nos. 1 and 2 in C.C. 402 of 2002 before the J.F.C.M. - II, Thiruvananathapuram seek to quash Annexure V protest complaint filed by the first respondent herein for offences punishable under Sections 120 B, 406 and 420 read with Section 34 I.P.C.

2. I heard Advocate Sri.M.V.S. Nampoothiri, the learned counsel appearing for the petitioners and Adv. Sri. D. Kishore, the learned counsel appearing for the first respondent/ complainant.

3. The learned counsel appearing for the first respondent/complainant made the following submissions before me in support of the complaint and the cognizance taken thereon:-

It is no part of the first respondent/complainant to drag the members of the royal family to the court. Annexure V protest complaint contains averments and

allegations sufficient enough to constitute the offences alleged. Paragraph two of the complaint indicates that there has been parting of property and intention to deceive which is sufficient to attract the offences. ***Vide Minu Kumari v. State of Bihar - 2006 (2) KLT 588 (SC).*** The power under Section 482 Cr.P.C. shoud not be exercised to stifle a legitimate prosecution and High Court will not embark upon an investigation. ***(See Fr. Jacob Kuruvila v. Ver. Rev. Baby Eachiravelil Vicar - 2005 (3) KLT 48.*** On 8-2-2007 an affidavit has been filed by the first petitioner before this Court admitting that something happened between their employee K.S. Damodaran and the complainant on 29-3-1999 and that the petitioners have subsequently dismissed from service the said Damodaran who had allegedly received Rs. 1,50,000/- each from the complainant and another person.

4. I am afraid that I cannot agree with the above submissions. The petitioners herein are two brothers by name Marthandavarma and Rama Varma both of Kowdiar Palace, Thiruvananthapuram. The first respondent Susheelan was a tenant of the petitioners in respect of a shop room bearing No. T.C. 37 of 889 which is a portion of a line building situated in Vanchiyoor Village. He was running a jewellery shop in that room under the name and style of "Thrissur Jewellery".

5. On 13-3-2000, the first respondent filed

Annexure I private complaint before the Additional Chief Judicial Magistrate, Thiruvananthapuram with the following allegations:-

The complainant is in occupation of two shop rooms under the petitioners herein from June 1987 onwards on a monthly rent of 1150/- rupees after paying an advance of Rs. 16,800/-. The complainant is conducting a jewellery shop under the name and style of "Thrissur Jewellery" in the said premises bearing Door No. T.C. 37/889. While so, for the purpose of expanding his business he approached the petitioners (accused) and offered to purchase the tenanted shop rooms. The accused told the complainant that the nearby shop occupied by DCM Textiles was under proceedings for eviction and as soon as the said shop room got vacated they would sell the said room together with the tenanted premises for Rs. 30 lakhs. A similar offer was made to another tenant, Mohanan. The accused also informed the complainant through their employee one that K.S.Damodaran the complainant should pay an advance amount of Rs. 1,50,000/- to each of the accused to 29-3-1999. Accordingly, on that day at about 10.15 a.m. the complainant entrusted Rs. 3 lakhs and the said Mohanan entrusted rupees one lakh with the accused by way of advance. Since the accused are members of the Royal Family, the complainant and Mohanan believed their words and therefore, no records were prepared evidencing

payment of advance. However, it turned out that the accused received the advance amount without any intention to honour their promise. The accused have thereby committed offences punishable under Sections 420, 406 and 120 B I.P.C.

6. The complaint was forwarded to the Sub Inspector of Police, Peroorkada under Section 156 (3) Cr.P.C. and the Peroorkada police registered a case as Crime No. 89 of 2000. Annexure II is the copy of the F.I.R. registered by the police. After a detailed investigation, the police filed Annexure III refer report before J.F.C.M. -II, Thiruvananthapuram. According to the accused there was no agreement either oral or written agreeing to sell the shop rooms either to the complainant or to Mohanan the petitioners/accused sold the shop rooms to Varghese Paul and John of Alukka Family for a total consideration of Rs. 80,00,000/- (Rupees eighty lakhs only) in the year 2001 as evidenced by Annexure IV series of registered documents.

7. Upon the Police submitting the refer report before Court, the complainant filed Annexure V protest complaint on which the learned Magistrate took cognizance of the offences referred to above and took the case on file as C.C. 402 of 2002. It is the said proceedings which are assailed in this petition filed by the accused.

8. The first respondent/complainant has filed a suit as O.S. 69 of 2000 before the Second Addl. Sub Court,

Thiruvananthapuram seeking specific performance of the oral agreement for sale . Annexure VI is the copy of the plaint in the said suit. Similarly, Mohanan, the rental occupant of the adjoining room has also filed a suit as O.S. 60 of 2000 for specific performance of the alleged oral agreement. Annexure VII is the written statement filed by the petitioners/accused in that suit .

9. It is true that a reading of Annexure V protest complaint would go to show that the petitioners/accused had promised to sell the rooms in question to the complainant for Rs. 30 lakhs and had received an advance amount of Rs. 3 lakhs. But it is too much to assume that three lakhs of rupees was paid to the two petitioners in equal shares without any scrap of paper evidencing the payment. in fact, the complainant has also instituted a civil suit for specific performance of the alleged oral agreement for sale. Under these circumstances, it will be gross abuse of the process of the criminal court to entertain the protest complaint and proceed against the petitioners/accused particularly after the investigation by the police wherein it has been prima facie found that the case of the complainant is not true. During the course of investigation, the police also found that Annexure - I complaint was filed by the complainant on coming to know that the accused were selling the rooms to Alukka Brothers. This is so stated in Annexure - III refer report filed by the

police. This fact has been proved to be true by Annexure 4 series of sale deeds whereby the rooms in question have been sold by the accused to Alukka's brothers for a consideration of Rs. 80,00,000/- (Rupees eighty lakhs).

10. In **State of Hryana v. Bhajanlal and Others - 1992 Suppl. (1) SCC 335** the Apex Court had inter alia enumerated a few categories of cases where the extraordinary power of the High Court under Art. 226 or the inherent power under Sec. 482 Cr.P.C. could be exercised by the High Court either to prevent abuse of the process of Court or otherwise to secure the ends of justice. Among the enumerated categories, category No. V reads as follows:-

> "Where the allegations made in the F.I.R. or complaint are so absured and inherently improbable that no prudent person could ever reach a conclusion that there is sufficient ground for proceeding against the accused".

11. Fraudulent and dishonest intention must be shown to be existing from the very beginning of the transaction. From the mere failure to keep the promise at a subsequent stage, offence of cheating cannot be made out. It may, at best, amount to a mere breach of contract for which a prosecution of the accused for the offence of cheating may not be the solution. ***(See Anil Mahajan v. Bhor Industries Limited - 2006 (1) SCC Crl. 746). In Murarilal Gupta v. Gopi Singh - 2000 (2) SCC Crl. 430***

it was held that merely because the accused had failed to honour the agreement, it cannot be said that he had cheated the complainant. The complainant was granted liberty to pursue such other remedy under the civil law as may be available to him. Towards the end of paragraph 6 of the judgment the Supreme Court observed as follows:

> "Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Sec. 420 or Sec. 406 I.P.C. is made out even prima facie".

Again in ***Ram Biraji Devi and Anr. v. Umesh Kumar Singh - 2006 (6) SCC 669***, the Apex Court observed as follows:-

> "Even if the allegations made in the complaint are accepted to be true and correct the appellants cannot be said to have committed any offence of cheating or criminal breach of trust neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant. The averments in the complaint and the statements of the complainant and his witnesses recorded by the Magistrate would amount to civil liability inter se of parties and not criminal liability".

In ***Madhava Rao Jiwaji Rao Scindia v. Sambhaji Rao***

Chandraoji Rao Angre - 1998 (1) SCC 692 it has been observed as follows:

> "Though a case of breach of trust may be both a civil wrong and a criminal offence, but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence".

Again in **Hotline Teletubes and Components Limited v. State of Bihar - 2005 SCC Crl. 1515** - the Apex Court observed as follows:

> "It appears from a bare perusal of the complaint that it is a case purely civil liability and no criminal offence is disclosed, much less, offences either under Section 406 or 420 I.P.C. So far as the High Court is concerned it has not considered this aspect of the matter, but has refused to quash the prosecution observing that it was a fit case where parties should take steps for settlement. In other view, allowing such a prosecution to continue would amount to an abuse of the process of court and to prevent the same it would be just and expedient to quash the same".

The Apex Court consisting of three judges taking note of the fate of the previous civil litigations and the existence of another civil litigation between the parties, observed as follows:-

> "Chagrined and frustrated litigants should not

> be permitted to give vent to their frustration by cheaply invoking the jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both the courts in the Rent Control Proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court should not have glossed over this important fact. While declining to exercise its power under Section 482 Cr.P.C".

12. Apart from the fact that the alleged payment of Rs. 3,00,000/- unsupported by any scrap of paper is inherently improbable, the main grievance of the complainant is that the accused persons who are members of the royal family failed to keep the promise at a subsequent stage. Even assuming that there was any breach of promise by the accused, that cannot give rise to a cause of action for criminal prosecution, particularly when, the complainant as well as Mohanan referred to above already approached the civil court for specific performance of the alleged oral agreement. The police also had found the case of the complainant to be false and actuated by ulterior motive consequent on the accused contracting with Alukka brothers for sale of the shop rooms

in question. The cognizance taken on the protest complaint without accepting the refer report by the police was wholly unwarranted and unsustainable. The proceedings initiated as S.C.C. 402 of 2002 before the J.F.C.M.-II, Thiruvananthapuram pursuant to Annexure V protest complaint are accordingly quashed.

In the result, this Criminal M.C. is allowed as above.

V. RAMKUMAR, JUDGE.

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